



David B. Cohen

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone
(617)-796-1120

Telefax
(617) 796-1142

TDD/TTY
(617) 796-1086

E-mail
mkruse@newtonma.gov

Public Hearing Date: March 11, 2008
Land Use Action Date: May 6, 2008
Board of Aldermen Action Date: May 19, 2008
90-Day Expiration Date: June 11, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner *CH*
Robert Merryman, Senior Planner

DATE: March 7, 2008

SUBJECT: **Petition #62-08 of LISA ROSENBAUM & RONALD D. FISHER** requesting a SPECIAL PERMIT/SITE PLAN APPROVAL for a recently constructed detached garage that exceeds the 700 sq. ft. limit and approval of a new accessory apartment within a detached new garage exceeding 1,000 sq. ft. and waiver of the 4 year "look-back" for new accessory apartment, and waiver of driveway width/curb cut and construction of walls with grade changes exceeding 3 feet on a lot containing an existing single-family dwelling having approximately 34,340 sq.ft. of land at 99 KIRKSTALL ROAD, NEWTON, Ward 2, Section 22, Block 28, Lot 1, within a SINGLE RESIDENCE 2 DISTRICT.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

In 2006, the petitioners proposed to demolish an existing 500 sq.ft. two-car garage and replace it with a larger garage and new accessory apartment in the same footprint. The Inspectional Services Department determined that this would require a special permit and the project was withdrawn. Subsequently, the petitioners changed their plans and in May 2007, obtained a building permit for a three-car garage with habitable space not defined as a dwelling unit. The old garage and driveway with access to Pheasant Road were removed, and a new 4-8 foot high landscape wall was constructed. During a construction inspection of the site, the Inspectional Services Department determined that the new garage exceeds 700 sq.ft. in total area and grading of the site resulted in a topographical change in excess of three feet in four areas, thus triggering special permit review. The project also requires zoning relief from the maximum driveway and curb cut widths. In their application to the Board of Aldermen for special permit, the petitioners request permission to allow occupancy upon completion of the accessory apartment, which would otherwise be required to remain vacant for four years according to the City's "look back" provision.

While larger than allowed as-of-right, the Planning Department believes that the size of this garage is compatible with the size of the house and the large lot. Additionally, the garage portion of the new unit is below grade and only visible when viewed up the driveway from the public way. Additional landscaping is recommended along the southeastern property line to provide some further screening as well as soundproofing of a generator from the abutting neighbor to the east.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

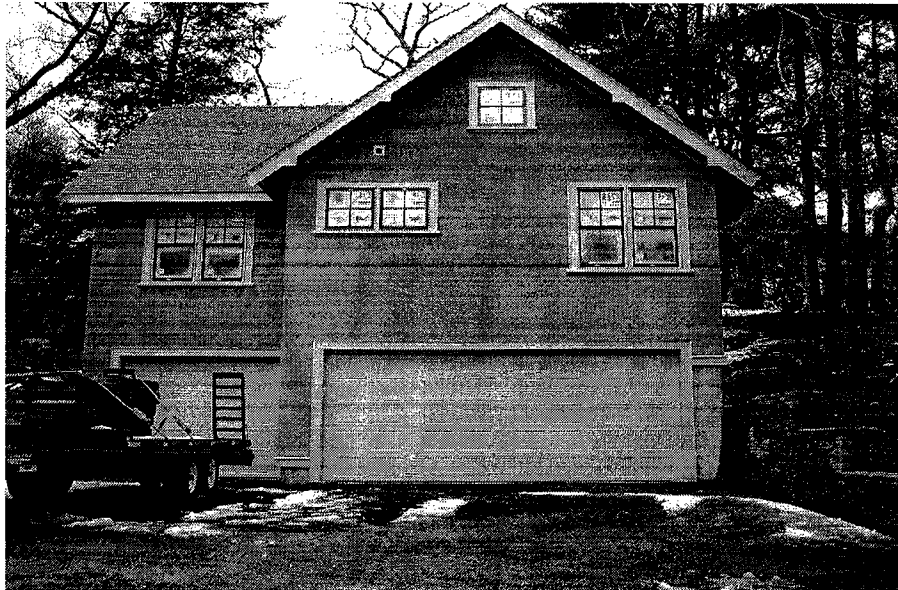
In reviewing this petition, the Board of Aldermen should consider whether:

- the proposed accessory apartment and garage are consistent with the scale and character of the residence and the neighborhood;
- the 1,044 sq.ft. garage would have any adverse affect on the site or immediate neighborhood;
- the proposed driveway width and curb cut are excessive for the neighborhood; and
- the three foot grade change would have any adverse affect on abutters.

II. CHARACTERISTICS OF THE SITE, AND NEIGHBORHOOD

- A. Site. The subject property is located at 99 Kirkstall Road and contains approximately 34,340 square feet of lot area. The site was improved with a 5,767 square foot single-family dwelling built in 1910 and a two-car detached garage built in 1927, which was demolished in the past year with approval of the Newton Historical Commission. The petitioners' lot is one of the largest in the neighborhood and has more than double the lot area need for a "new lot" single-family dwelling. The existing lot is unique as it has three street frontages totaling over 500 linear feet, one side yard and no rear yard.

The existing lot generally slopes downward towards the street, with the highest point (155 foot elevation) located between the house and the new accessory building and the lowest point (135 foot elevation) at the southeast corner of the property by the entrance to the new driveway on Upland Road.



The existing garage was removed and the new structure is nearly finished, as are the driveway from the garage to the street, the retaining walls, and three-foot grade changes.

- B. Neighborhood. The site is located in the middle of a Single Residence 2 District in Newtonville. Single-family residences are the predominant land use in the neighborhood. Two blocks to the north is the beginning of a large Multi Residence 1 District with predominately two-family dwellings. Four blocks farther north is the Newtonville commercial district.

III. PROJECT DESCRIPTION AND ANALYSIS

- A. Building design, colors and materials. The new structure has a stucco façade, architectural shingles and copper gutters, which match the colors of the main house. The design mimics the larger single-family dwelling and will appear to be an integral part of the estate-like lot.
- B. Landscaping. The submitted landscape plan depicts removal of several hemlock trees and limited new plantings including 11 Mountain Laurel (evergreen) and Viburnum (deciduous) bushes and unlabeled planting beds. A fieldstone wall will be added adjacent to the new driveway. Although the site appears well landscaped, the petitioner has not proposed any major increase in plantings. The Planning Department recommends that the petitioner substantially increase the landscaping surrounding the new building as follows:

- Evergreen trees (8-10 ft. high) between the abutting property line and the new structure to break up the view of the structure;
- Evergreen bushes and soundproofing (such as a wall) between the abutting property line and the new emergency generator, which must meet the City 's Noise Ordinance; and
- Evergreen bushes around the air conditioning unit.

C. Grading. The submitted site plan depicts four areas with grade changes of three feet or more. The petitioner has made cuts behind the structure and in front for access to the garage. These cuts will have no visual or other negative effect on the site or neighbors. A third cut is located along an existing patio wall and the Planning Department believes it should be considered *de minimus*. Fill will be added to the area where the old driveway was removed to restore the natural grade and should have no negative effect on the site or neighbors.

IV. TECHNICAL REVIEW

A. Technical Considerations. The following chart illustrates how the proposed new single-family dwelling in a Single Residence 2 District on an "old lot" compares to the dimensional and parking requirements of the Ordinance:

SINGLE RESIDENCE 2	Ordinance	Existing	Proposed
Min. Lot Size	10,000 s.f.	34,340 s.f.	Same
Min. Frontage	80 ft.	513 ft.+/-	Same
Setbacks			
Front	25 ft.	37 ft.	37 ft./house 25 ft./garage
Side yard	7.5 ft.	16 ft.	16 ft./house 13 ft./garage
Rear yard	NO REAR YARD		
Max. Height	25 ft./house 18 ft. garage	N/A N/A	----- 18 ft./garage
Max. Stories	2 ½ house 1 ½ garage	N/A	----- 1.5 story/garage
Max Lot Coverage	30%	9%	10.6 %
Min. Open Space	50%	83%	81%
F.A.R.	0.35	0.11	0.13
Parking Spaces	2 stalls	2 stalls 2-car garage	2 stalls 3-car garage
Maximum Garage Size	700 sq. ft.	500 sq. ft.	1044 sq. ft. (854 sq. ft. net)
Width of Driveway	20' max.	10 ft. 23 ft./garage	10 ft. 23-30 ft./garage

The table above shows the lot and residence meet all the dimensional requirements except the size of the proposed garage and width of the driveway and curb cut.

Zoning Review Memorandum

ATTACHMENT A

Dt: July 13, 2006

To: Edward T. Patten, representing R. and L. Rosenbaum

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development
John Lojek, Commissioner of Inspectional Services

Re: Zoning review of application for a new detached accessory apartment

Applicant: Ronald D. and Lisa Rosenbaum

Site: 99 Kirkstall Rd., Newtonville

SBL: Section 22, Block 28, Lot 01

Zoning: Single Residence 2

Lot Area: 34,340 sq. ft.

Current use: Single family and det. garage

Prop. use: Single family and det. garage
with accessory apt. above

Background:

The applicant seeks to demolish an existing garage constructed pursuant to Building Permit #645-388 issued May 5, 1927, and plans to build a new structure containing a new garage with an accessory apartment above. Section 30-8(d)(2) requires the grant of a special permit from the Board of Aldermen for a detached accessory apartment.

Administrative determinations

1. *Section 30-8(d), Table 30-8 Dimensional Requirements for Accessory Apartments* (Table 30-8) establishes minimum lot area and building size requirements for accessory apartments in SR-2 zoned areas. The site is not located within any Overlay district. The subject lot is deemed to be a pre-1953 lot based comparison with the City of Newton Atlas 1929, where lot area and shape appear the same as on current submitted plans. Lot area of 34,340 sq. ft. meets Table 30-8 requirements.
2. *Table 30-8* requires a minimum building size of 3,100 sq. ft. without a special permit, and allows a lesser building size of 2,600 sq. subject to special permit. Section 30-1 Definitions-*Building Size*, subparagraph (d) pertains specifically to detached accessory apartments and provides that the combined habitable space of the primary dwelling plus proposed accessory apartment together constitute building size. The applicant's architect states in a letter dated June 29, 2006, bearing the architect's professional registration stamp and signature, that the existing dwelling house has 5,767 sq. ft. and the proposed accessory apartment will contain 1,046 sq. ft., totaling 6,813 sq. ft. This exceeds the minimum requirements noted above.
3. *Section 30-8(d)(1)c* establishes the building size/area requirement (400 sq. ft. – 1,000 sq. ft.) generally applicable to accessory apartments. This range may be further extended up to 1,200 sq. ft. [or up to 33% of the main dwelling, whichever is

more], as provided in 30-8(d)(2)a). As stated in the architect's letter, the accessory apartment will contain 1,046 sq. ft., necessitating a special permit per 30-8(d)(2)a).

4. *Section 30-8(d)(1)e* establishes a 4-year "look-back" period precluding newly constructed improvements, other than certain limited life safety alterations enumerated in *Section 30-8(d)(1)d*), for use in conjunction with accessory apartments. It is noted that while the applicant's attorney disputes the applicability of this requirement to the subject case, the City's maintains its established position in this matter. However, an ancillary footnote to this provision makes possible alteration of this requirement subject to the grant of a special permit pursuant to *Section 30-8(d)(2)*. The applicant desires to replace the existing garage with a new and larger accessory building containing both a garage on the lower level and an accessory apartment above and therefore seeks relief from the look-back limitation.
5. *Section 30-8(d)(1)g*) specifically prohibits lodgers "...either in the original dwelling unit or the accessory apartment." The applicant should provide a notarized affidavit evidencing compliance with this requirement.
6. *Section 30-8(d)(1)h*) together with *Sections 30-19(d)(2)*, *30-19(d)(19)*, *30-19(g)* and *30-19(i)(1)* establish the parking and screening requirements for parking facilities in conjunction with accessory apartments. Submitted plans indicate all three required spaces will be located within the lower level of the proposed new accessory building. The architect's letter states that the existing driveway dimensions of 28 ft. at the curb and 23 ft. at the lot line will be maintained. However, as these dimensions exceed the 20 ft. maximum established by *30-19(g)(3)*, this necessitates a waiver from the Board of Aldermen per *Section 30-19(m)*.
7. *Section 30-8(d)(1)i*) requires that the accessory apartment comply with all applicable building, fire, and health codes. As plans provided by the applicant are not submitted for formal permitting at this time, Inspectional Services Department (ISD) staff have conducted a preliminary plan review only. ISD reserves the right to make a final determination at such time as the petitioner submits a set of code-compliant plans in accordance with established building permitting procedures. The applicant's architect has been referred to ISD for clarification of technical fire rating matters. In the event life safety considerations are not fully addressed at the time of application to the Board of Aldermen for special permit, it is recommended such special permit, if granted by the Board, be approved only on condition of full compliance with all applicable life safety codes.
8. *Section 30-15, Table 1- Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1)*, and *Section 30-15(m)(1)* and *(2)* establish the setback and height provisions applicable to accessory buildings. The proposed detached accessory structure meets the setback and height requirements for accessory buildings. However, *Section 30-15(m)(2)* precludes habitable space within an accessory building above 18 ft. unless a special permit is granted by the Board of Aldermen. As the proposed loft will in part be located above 18 ft., this necessitates a special permit.
9. *Section 30-15(m)(3)* establishes a 1.5 story limit for accessory buildings. The architect's letter states that the loft level meets the ½ story requirement as established in *Section 30-1, Definitions – Story, half*. In addition, the architect has indicated that the loft level will be utilized for storage and mechanical purposes.

10. As the subject garage is over 50 years old, its proposed demolition was reviewed by the Newton Historical Commission, which determined on January 30, 2006, that this building does not fall in the category of "Preferably Preserved."
11. Submitted plans indicate an area where existing grades will be changed in excess of three feet, which necessitates a special permit from the Board of Aldermen per Section 30-5(b)(4).
12. Submitted plans lack the respective stamps and signatures of applicable registered professionals preparing the plans and certifying required calculations. Stamped and signed plans are required not later than at the time of filing of the petition with the Board of Aldermen.
13. The submitted plans comply with the Newton Zoning Ordinance except as outlined in the "Zoning Accessory Apartment Criteria " below.
14. See "Zoning Relief Summary" below.

Zoning Accessory Apartment Criteria		
Ordinance		Complies
	Main Dwelling	
30-8(d)(1)(a)	Owner occupied single family dwelling.	Yes
30-8(d)(1)(b)	Primary dwelling was constructed on or before January 1, 1989.	Yes
30-8(d)(2)(b)	Exterior alterations are in keeping with the architectural integrity of the structure and the residential character of the neighborhood.	N/A
	Accessory Building	
30-15, Table 1	Meets front setback for primary dwelling in the SR2 zone.	Yes
30-15(m)(1)	Meets 5 ft. side setback for accessory building.	Yes
30-15(m)(2)	Meets 18 ft. height limit for accessory building.	Yes
30-15(m)(2)	Meets 18 ft. habitable space limit. (See <i>Zoning Relief Summary</i>)	No
30-15(m)(3)	Meets 1.5-story limit for accessory building.	Yes
	Detached Accessory Apartment	
30-8(d)(1)(f)	Maximum 1 accessory apartment per lot.	Yes
30-8(d)(1)(e)	Additions and alterations made within prior 4 years may not be applied to meet Table 30-8 requirements. (See <i>Zoning Relief Summary</i>)	No
30-8(d)(2)(a)	Meets size requirement of 400-1200 sq. ft. (or max. 33% of total building size in main dwelling, if more) (See <i>Zoning Relief Summary</i>)	Yes
30-8(d)(1)(i)	Complies with building codes.	Yes
30-8(d)(1)(i)	Complies with fire codes.	TBD*
30-8(d)(1)(i)	Complies with health codes.	Yes
	Lodgers	
30-8(d)(1)(g)	No lodgers permitted in either the original dwelling unit or the accessory apartment.	*TBD

Zoning Accessory Apartment Criteria (cont.)		
Ordinance		Complies
	Parking	
30-8(d)(1)(h) 30-19(d)(19)	One stall per accessory apartment - in garage.	Yes
30-8(d)(1)(h) 30-19(i)(1)	Landscaping buffer between parking and street or between parking and abutting properties consistent with the options and requirements stated in 30-19(i)(1)(a) – (c). <u>Note</u> : parking in garage.	N/A
30-19(d)(1)	Two parking stalls for each dwelling unit for a 1F (or 2F) dwelling -- in garage.	Yes
	Table 30-8 Dimensional Requirements – SR2 (No Overlay)	
30-8(d)	Meets minimum lot size (15,000 sq. ft. in SR-2).	Yes
30-8(d)	Meets minimum building size (3,100 sq. ft. in SR-2), including detached unit per Section 30-1, <i>Building Size</i> , subpara (d).	Yes

*TBD – to be determined.

Zoning Relief Summary		
Ordinance		Action Required
	Accessory Apartment	
30-8(d)(2)	Approval of detached accessory apartment in a SR- 2 zone.	X
30-8(d)(1)e 30-8(d)(2)	Approval to alter 4-year “look-back” period to 0 years for proposed new construction accessory apartment.	X
30-8(d)(1)c 30-8(d)(2)a	Approval of accessory apartment having 1046 sq. ft., which exceeds 1,000 sq. ft., but is within 1,200 sq. ft. (and 33%) limit.	X
	Accessory Building	
30-15(m)(2)	Approval of habitable space within half story (loft) partially above 18 ft. height limitation.	X
	Parking	
30-19(g)(3) 30-19(m)	Waiver to allow existing entry/exit drive exceeding 20 ft. in width having 28 ft. at curb and 23 ft. at front lot line.	X
	Site	
30-5(b)(4)	Approval of grade change in excess of 3 ft.	X
30-23	Approval of site plan	X
	Special Permit	
30-24(d)	Approval of special permit.	X

Plans and materials reviewed:

- Plan set titled “Fisher Garage and Accessory Apartment, 99 Kirkstall Rd., Newton, MA 02460”, prepared by Hajian Architects, 56 Dexter Ave., Watertown, MA 02472, dated 3/15/06, except as otherwise noted below, bearing no stamp or signature by registered architect, registered surveyor or professional engineer, consisting of the following:
 - Drawing No. T-1 – Title Sheet
 - Sheet 1 of 2 – Site Plan of Land in Newton, MA, by Everett M. Brooks Co., Surveyors & Engineers, 49 Lexington St., West Newton, MA 02465, dated 3/21/06
 - Sheet 2 of 2 – Site Plan of Land in Newton, MA, by Everett M. Brooks Co., as above.
 - Drawing No. A-1 – Proposed Basement & First Floor Plans

- Drawing No. A-2 – Proposed Loft Plan, Window Schedule, Room Finish Schedule
 - Drawing No. A-3 – Exterior Elevations
 - Drawing No. A-4 – Building Section, Wall Section
 - Drawing No. A-5 – Existing Garage, Site Plan, Elevations, and Demo Notes
- Plan titled “Plan of Land in Newton, MA, to Accompany the Petition of Paul Hajian, 56 Dexter Ave, Watertown, MA, dated March 21, 2006, prepared by Everett M. Brooks Co., Surveyors & E engineers, 49 Lexington St., West Newton, MA 02465 showing the general area of the subject lot, bearing no stamp or signature.
- Correspondence from Edward T. Patten, dated May 23, 2006 and June 6, 2006
- Correspondence from Paul Hajian, Project Architect, dated June 29, 2006.
- E-mail correspondence from Paul Hajian, Project Architect, dated July 12, 2006
- Supplemental drawings received by e-mail from Paul Hajian, Project Architect, in PDF format bearing no professional stamp or signature, as follows:
 - Revised South Elevation, dated July 10, 2006
 - Revised First Floor Plan, dated July 12, 2006
 - Revised Loft Plan, dated July 12, 2006

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 99 Kirkstall Rd

Date: March 6, 2008

CC: Lou Taverna, PE City Engineer (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Site plan of Land
99 Kirkstall Rd.
Newton, MA
Prepared by: Everett M. Brooks
Dated: January 25, 2008
Revised: 1-30-'08*

Drainage:

1. The drainage analysis is correct for the City of Newton's 100-year storm event. However, a soils evaluation is needed to confirm the design assumptions.

Sewer:

1. The sewer services and the water service shall be pressure tested & witnessed in accordance to the City Construction Standards.

Driveway Access & Sidewalk Restoration:

1. The maximum driveway opening is allowed for residential construction is 22-feet this proposal has 28-feet, this needs to be corrected.
2. In concert with the sidewalk & driveway apron restoration, it would be a Public benefit if the applicant would install handicap ramps at the corners of Upland Road and Pheasant Road.

General:

1. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
2. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
3. The applicant will have to apply for a Building permits with the Department of Inspectional Service prior to any construction.
4. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
5. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
Michael J. Kruse, Director

ATTACHMENT C

Telefax
(617) 796-1142

RECORD OF ACTION

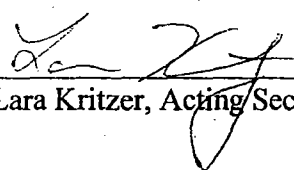
DATE: January 30, 2006

SUBJECT: 99 Kirkstall Road – Demolition Review – Garage

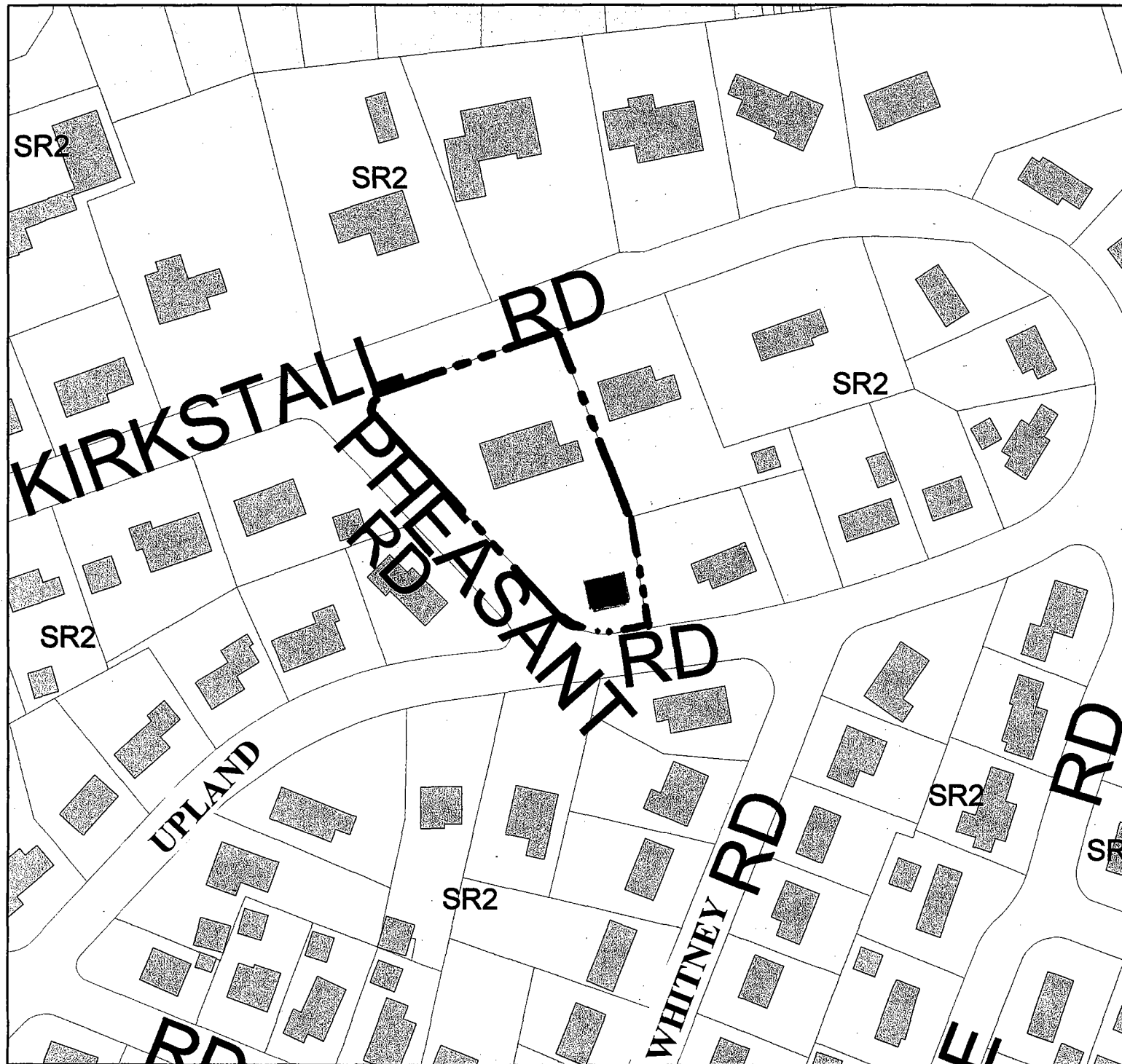
At a scheduled meeting and public hearing on January 26, 2006 the Newton Historical Commission, by a vote of 7 to 0, passed the following motion:

RESOLVED to find the detached two-car garage behind the ca. 1910 Craftsman style house to be **Not Preferably Preserved** as it does not contribute to the architectural character of the site.

Voting in the Affirmative: John Rodman, Chairman; Donald Lang, David Morton,
Donald Tellalian, Charles McMillan, Nancy Grissom,
William Roesner



Lara Kritzer, Acting Secretary



99 KIRKSTALL ROAD

City of Newton

Newton Boundary	Zoning Districts
Property Boundaries	Single Res. 1
Street Names	Single Res. 2
	Single Res. 3
	Business 1
	Business 2
	Business 4
	Business 5
	Lim. Manuf.
	Manuf.
	Multi-Res. 1
	Multi-Res. 2
	Multi-Res. 3
	Multi-Res. 4
	Mixed Use 1
	Mixed Use 2
	OS/Rec.
	Public Use
	Buildings

1" : 122.4'



The information on this map is from a digital data base accessed using the Newton Geographic Information System (GIS). Newton cannot guarantee the accuracy of the information contained on this map. Each user of this is responsible for determining its suitability for his or her intended use or purpose. City departments will not necessarily approve applications based solely on GIS. Applicants for city permits and licenses must inquire the relevant city department for applicable requirements. City staff correct errors in these data as they are identified. Newton's GIS Administrator maintains records regarding the source materials and methods used to create the data and will disclose this information upon request.

DATA SOURCES (Not all necessarily apply to this map):
 Parcel boundaries compiled on 1978 1:1000 orthophoto base map. Building footprints and edge-of-rooflines from Boston Edison Company 1981 aerial photograph; Newton will have updated the buildings from building permits and parcel boundaries from subdivision plans. Thematic data (e.g., zoning and other data) from the Assessor's CAMS database.



13-Feb

ATTACHMENT D